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THE TELECOMMUNICATIONS ASSOCIATION
50 Years of Leadership
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September 15, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Ex Parte

Re: CS Docket No. 97-151

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's Rules, this is to notify you that undersigned counsel, on behalf of UTC, The Telecommunications Association (UTC) submitted the attached written presentation to Chairman Kennard, with copies to each of the Commissioners and the Chief of the Cable Services Bureau, in the above-referenced docket.

Two copies of this presentation are included for filing in the record of this proceeding.

If there are any questions concerning this matter, please let me know.

Very truly yours,

Jeffrey L. Sheldon
VP & General Counsel

Attachments

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September 15, 1998

William E. Kennard, Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Ex Parte

RE: CS Docket No. 97-151

Dear Chairman Kennard:

On April 13, 1998, UTC[1] and the Edison Electric Institute (EEI) filed a "Joint Petition For Clarification And Or Reconsideration" of the FCC's *Report and Order* (*R&O*), FCC 98-20, released February 6, 1998, regarding the adoption of final rates, terms and conditions governing pole attachments after February 8, 2001.[2] As part of that petition EEI and UTC requested reconsideration of the FCC's decision to apply Section 224's pole attachment provisions to wireless attachments. Below, UTC seeks to supplement the record with additional market information that demonstrates that regulated pole attachment rates are not necessary for the competitive deployment of wireless infrastructure.

The Joint Petition argued that there is absolutely no factual basis or any compelling policy reason for the FCC to attempt to force the square peg of wireless attachments into the round hole of the pole attachment formula. It was noted that there are significant distinctions between traditional pole attachments and wireless attachments in terms of the types of equipment, types of facilities, location of attachments, and impact on utility equipment that do not easily fit into the pole attachment rate methodology.[3]

[1] UTC was formerly known as the Utilities Telecommunications Council.

[2] Notice of the Joint Petition was published in the Federal Register on April 27, 1998.

[3] For example, while cable attachments are situated in a communications space below the electric lines, wireless attachments are usually located above the electric lines raising a host of new safety, reliability and space allocation issues. Wireless attachments also require much more associated equipment and facilities per attachment than traditional wireline pole attachments.

Finally, the Joint Petition urged that the FCC's adoption of pricing rules for wireless attachments be set-aside because of the basic fact that regulated pole attachment rates are not necessary to ensure the availability or rapid deployment of wireless facilities. Not surprisingly, the wireless tower market is blossoming on the coattails of a growing wireless industry. The sheer number of wireless services licensed by the FCC in the last ten years has caused demand for tower space to increase. In some instances, wireless providers have constructed their own towers and antenna sites. In addition, a growing segment of the wireless facility siting market is comprised of public companies that have made it their entire business to install and manage wireless communications sites. Companies such as Westower, Pinnacle, American Tower Corporation, Crown Castle, Specialty Teleconstructors and U.S. RealTel, are all growing concerns that are operating on the assumption that wireless siting is an expanding field that is subject to fair competition. However, the FCC's decision to regulate rates for wireless attachments to utility poles threatens to undermine this growing industry by creating an artificially low siting price with which all entities offering wireless siting will have to compete.[4] This data also clearly demonstrates that utilities do not control essential facilities for siting antennas. There is no reason for government regulation of utilities participating in this market.

Unlike wireline telecommunications, wireless carriers do not need access to contiguous sites. The Joint Petition argued that there are multiple superior alternatives to utility facilities for the siting of wireless facilities that eliminate any ability of utilities to exact monopoly rents.5 In fact, the imposition of a below-market regulated rate for wireless attachments will only serve to distort the well-established market for wireless sites. Ironically, and as detailed below, even the Federal government leases wireless sites at market rates.6 Investor-owned utilities should not be singled-out for rate regulated access to their facilities for wireless siting when all other entities, including the Federal government, are permitted to recover market rates for wireless access.

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[4] If the FCC were to also take a close look at how these entities are financed, it would see that the risk associated with its regulations is not just that the businesses might not be able to compete, but also that these companies could unnecessarily default on their debt obligations or cause shareholders to lose their investments.

[5] Local siting and zoning problems that wireless providers are encountering are completely unrelated to the issue of regulated rates for wireless attachments to utility facilities. and will not be alleviated by access to utility facilities.

[6] The Joint Petition requested that the FCC should, at a minimum, adopt a policy that a utility rate for a wireless site is presumptively reasonable if it is comparable to the rate offered by the Federal government in the same geographic area. Presidential Executive Order "Facilitating Access to Federal Property for the Siting of Mobile Services," August 10, 1995, requires the payment of market rates for the siting of wireless facilities on Federal lands.

In support of its position that the FCC should consider the market conditions for wireless antenna siting and the negative effects it would create by imposing rate regulation on the attachment of wireless equipment to utility poles, UTC offers the attached market data compiled from a variety of sources.

Should you or your staff have any questions concerning this matter, please do not hesitate to contact me at (202) 872-0031 ext. 216.

Very truly yours,

Jeffrey L. Sheldon
VP & General Counsel

Attachment

cc (w/ attachment):
Commissioner Ness
Commissioner Tristani
Commissioner Powell
Commissioner Furchtgott-Roth
Deborah A. Lathen

Research Demonstrating Robust Market For Wireless Sites

Private Tower Siting Companies

SBA Communications Corporation

SBA Communications Corporation ("SBA"), based in Boca Raton, Florida, provides communications site services in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, D.C. and Wisconsin.[1] The company owns 217 towers, has agreements to acquire 74 additional towers and has non-binding mandates to construct 410 new towers.[2]

SBA's revenues for 1997 were $55 million. SBA is funded largely through $269,000,000 in registered senior discount notes.[3]

Crown Castle International Corporation

Crown Castle International Corporation ("Crown"), based in Houston, Texas, owns or manages 373 towers and 80 rooftops in Pennsylvania, Texas, New Mexico, Mississippi, Puerto Rico, West Virginia, Arizona, North Carolina, Oklahoma and Nevada.[4] The company is also in the course of completing the purchase of 50 additional towers in Philadelphia, Houston, Dallas and San Antonio. Crown anticipates that it will build an additional 100 towers in 1998 at a cost of $20.0 million.[5] The company reports that 1997 average monthly site rental for towers in the southwest was $3,000; $7,000 in Puerto Rico; and $12,500 for towers in the Pittsburgh area.[6]

Crown's 1997 gross revenues stemming from site leasing and other network services were $31.4 million.[7] The company states that it is highly leveraged,[8] including long-term debt in the amount of $156.3 million.[9]

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[1] Amendment No. 2 to Form S-4A Registration Statement Under the Securities Act of 1933, Filed July 28, 1998, at 60.

[2] *Id.* at 1.

[3] *Id.* at 35; *SBA Communications Closes on High-Yield Financing*, Wireless Today, Mar. 3, 1998.

[4] Final Prospectus, Form 424(B)(1) Filed Apr. 17, 1998, at 1.

[5] *Id.* at 46.

[6] *Id.* at 38.

[7] *Id.* at 39.

Pinnacle Holdings Inc.

Pinnacle Holdings, Inc, ("Pinnacle"), based in Sarasota, Florida, owns or manages 645 towers in Florida, Georgia, Alabama, Louisiana, Mississippi, Tennessee, North Carolina, South Carolina, Virginia, Texas, Maryland, Arkansas and New York .[10] The company has agreements to acquire an additional 196 towers.

Pinnacle's tower rental revenues for 1997 were $40 million. The company is financed through a combination of a $250 million revolving line of credit, $205.5 million in senior notes and through an initial public offering of stock from which the company hopes to generate an additional $162.4 million in capital.[11]

Westower Resources

Westower Resources, based in Vancouver, Washington, owns and manages communications towers and rooftops for antenna siting. The company has a presence in the Northeast, Southeast and Pacific Northwest. Westower will expand its presence with the completion of its acquisition of Standby Services Inc., which operates towers in Texas, Mississippi, Louisiana, Colorado and New Mexico.[12]

Westower had revenues of $23.2 million for the fiscal year ended February 28, 1998.[13] The company finances its operation through a $75 million line of credit,[14] $15 million in convertible notes,[15] and through capital raised in a 1997 initial public offering of shares.

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[8] *Id.* at 19.

[9] *Id.* at 29.

[10] Amendment No. 1 to Form S-11 Registration Statement Under the Securities Act of 1933, Filed July 27, 1998, at 51 ("Registration Statement"); see also *Pinnacle Towers Closes Acquisition, Builds Market Position*, Communications Today, Mar. 24, 1998.

[11] Registration Statement at 22-23.

[12] *Westower Primed for Eighth Domestic Acquisition*, Communications Today, July 13, 1998.

[13] Form 10-KSB Annual Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934, Filed June 1, 1998.

[14] *Pinnacle, Westower Active in White Hot Tower Site Market*, Communications Today, June 15, 1998.

[15] *Westower Gains Funds from $15 Million Sale of Convertible Notes*, Wireless Today,

American Tower Corporation

American Tower Corporation ("ATC") is based in Boston, Massachusetts. The company owns or operates more than 1800 towers in 44 states and the District of Columbia and has plans to construct an additional 400 to 500 sites in 1998.[16]

ATC's revenues for 1997 were $94.9 million.[17] The company is in the process of completing a public stock offering, which it expects will generate approximately $464.8 million in capital. ATC also has access to $900 million from bank credit facilities.[18]

Specialty Teleconstructors Inc./OmniAmerica

Headquartered in Cedar Crest, New Mexico, Specialty Teleconstructors, Inc. claims to be the largest, publicly traded, full-service transmission tower company in the United States. As a result of a merger consummated on April 23, 1998,[19] Specialty Teleconstructors/OmniAmerica owns and manages transmission towers for radio and television broadcasting, paging, cellular, PCS and other wireless technologies.[20] Before the merger, OmniAmerica owned and operated approximately 200 towers in 23 states. The merged company intends to expand this tower base.

Spectrum Resources Towers

Founded in November 1997 in Falls Church, Virginia, Spectrum Resources Towers L.P. ("Spectrum") is a new entrant into the tower business.[21] The company currently owns 25 towers in Oklahoma, Ohio, Georgia and Nevada and is targeting new markets in New Jersey, Maryland, Rhode Island, Indiana and Washington, D.C.[22]

May 12, 1998.

[16] Amendment No. 3 to Form S-1 Registration Statement Under the Securities Act of 1933, Filed July 1, 1998, at 46.

[17] *Id.* at 1.

[18] *Id.* at 18.

[19] Form 10-QSB Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934, Filed May 15, 1998.

[20] *OmniAmerica/Specialty Teleconstructors Sets Strategic Direction as First True Full-Service "Build-to-Suit" Tower Company Hicks, Muse, Tate & Furst Affiliate Readies Itself for Period of Infrastructure Outsourcing*; Press Release, May 5, 1998 (OmniAmerica/Specialty Teleconstructors is an affiliate of Hicks, Muse).

[21] *Ohio Assets Acquired by Towers Spectrum Resources*, Wireless Today, Apr. 20, 1998.

[22] *Portfolio of Oklahoma Antenna Tower Changes Hands*, Wireless Today, Mar. 9, 1998.

Spectrum has 5 sites under construction in Georgia and hopes to finalize agreements to construct 9 additional sites.

Spectrum rents antenna tower sites primarily to wireless communications entities, although it is also considering expansion into the broadcast market. Because this is not a publicly traded company, financial data is not available. However, company representatives reported that they lease PCS, cellular and SMR sites at an average monthly rate of $3,000. Paging leases run in the range of $500 to $1,800 per month.

Wireless Carrier Tower Siting Activities

In addition to the independent tower firms, several wireless entities have decided to optimize the use of their own towers by allowing unaffiliated carriers to lease tower space. For example 360° Communications leases space on over 1700 towers that it owns or operates in Pennsylvania, Tennessee, Virginia, Illinois, Indiana, Iowa, Kentucky, Ohio, West Virginia, Florida, North and South Carolina, Nevada, New Mexico and Texas.[23] In similar moves, PrimeCo has announced plans to make 1000 of its cell sites available to other wireless carriers[24] and GTE wireless is allowing wireless carrier access to 950 of its own sites.[25]

LCC International Inc., ("LCCI"), through its subsidiary Microcell Management, has entered the tower site business. Representatives of the company confirm that it owns over 200 towers and manages an additional 900 tower sites. LCCI recently entered into an agreement to construct 60 towers in the southeast to a PCS operator and is working to complete 200 other build-out deals in 1998.[26]

Property Owner Organizations

U.S. RealTel is a publicly held company based in Chicago, Illinois. Using its National Antenna Grid, the company coordinates access to over 20,000 pre-leased antenna sites for the wireless telecommunications industry.[27] The company claims that there is considerable demand for antenna sites on high-, mid- and even low-rise structures along vacant land. Consequently, the company states that property owners can earn from $5,000 to over $250,000 per year from the leasing of rooftop space.[28]

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[23] *360 Degree Communications Will Lease Out Antenna Tower Space*, Wireless Today, Dec. 16, 1997.

[24] *PrimeCo Sets Two-Pronged Collocation Strategy*, Communications Today, and June 10, 1998.

[25] Telephony Section, Communications Daily, Feb. 18, 1997.

[26] *LCC's Microcell Unit in PCS Tower Deal*, Wireless Today, July 9, 1998.

[27] Standard & Poor's Corporate Descriptions, Feb. 9, 1998.

[28] U.S. RealTel, www.usrealtel.com.

Kent Hansen Wadsworth, associate editor of the Journal of Property Management published by the Institute of Real Estate Management, has published guidelines on how property owners can turn their rooftops into profit centers. In his article, *Revenue from the Rooftops*,[29] Mr. Wadsworth notes that property owners can collect monthly rents that run from $300-500 for a paging antenna to $3,000-5,000 per month for satellite or digital video antennas. Using a Columbia, Maryland hotel as an example, Mr. Wadsworth notes that the hotel generated annual antenna leasing revenue of $70,000.

The Building Owners and Managers Association is espousing a similar point of view. Its new book, "Wired for Profit," provides property owners with detailed guidelines on how to generate revenue from telecommunications siting.[30]

Local, State and Federal Government Antenna Programs

Federal Government

In accordance with the President's Executive Memorandum of August 10, 1995,[31] and Section 704 of the Telecommunications Act of 1996, federal agencies provide access to federal buildings, facilities and public lands for the installation of wireless communications equipment. The General Services Administration has established guidelines to implement this Memorandum.[32]

In addition to covering the costs the agency incurs to provide access for antenna siting, agencies charge the wireless entity an annual lease fee based on the market value of the proposed arrangement.[33] According to the General Services Administration, which is responsible for this program, the agencies actively monitor the antenna siting market to ensure that the government is entering into agreements that are fair and competitive. For example, based on an assessment of the local market, rooftop access on

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[29] Institute of Real Estate Management, www.irem.inter.net.; *See also*, Andrew N. Jacobson, *An Owner's View of Telecommunications Site Agreements*, American Bar Association, Section of Real Property, Probate and Trust Law, www.abanet.org/rppt/jf98jacob.html.

[30] *Building Managers See New Dollars in Telecommunications*, Communications Today, Apr. 27, 1998; www.boma.org.

[31] *Facilitating Access to Federal Property for the Siting of Mobile Services*, Executive Memorandum, Aug. 10, 1995.

[32] Placement of Commercial Antennas on Federal Property, 61 FR 14100, Mar. 29, 1996; Placement of Commercial Antennas on Federal Property, 62 FR 32611, June 16, 1997; Public Buildings and Space, 63 FR 10631, Mar. 4, 1998.

[33] Public Buildings and Space, 63 FR 10631, Mar. 4, 1998.

federal buildings in the District of Columbia is leased out at an average rate of $20,000 per year, subject to annual increases in the range of 3-5%. Lease terms may vary based on the nature of the technology, the number of sites to be leased, the duration of the lease and other factors. As the market changes, the government strives to move with it.

GSA reports that it has signed leases for 67 government buildings that will generate revenues of over $1 million per year.[34] According to the Office of Governmentwide Real Property Policy, other agencies have also leased antenna space.[35]

Placement of Commercial Antenna on Federal Property

Agency	Received	Approved	Pending	Denied
Dept. of Agriculture	100	64	32	4
Dept. of Defense	42	2	39	1
Dept. of Army				
Corps of Engineers – Civil	27	18	6	3
Corps of Engineers – Military	18	9	8	1
Dept. of Commerce	3	1	1	1
Dept. of Health and Human Serv.	2	2	0	0
Dept. of Interior	57	29	28	0
Dept. of Transportation	25	3	22	0
Bonneville Power Association	66	65	0	1
NASA	3	2	1	0
Tennessee Valley Authority	75	15	60	0

In a recent development, Representative Tauzin (R-LA), Chairman of the House Telecommunications Subcommittee introduced H.R. 3844,[36] which states that "a department, agency, officer, or instrumentality of the United States with control of real property ... that receives a request... from a provider of personal wireless services for access to and use of such real property for siting of facilities used in providing such services, ... shall make that real property available, on a fair, reasonable, and nondiscriminatory basis and at not more than a reasonable fee (which shall in no event exceed fair market value)..." This bill is aimed at addressing 911 services, however, the siting provisions were added to ensure that the federal government continues to lease space to wireless telecommunications entities.

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[34] *GSA Partners with Wireless Communications Industry to Meet Growing Demand for Mobile Communication Antenna Sites*, GSA Press Release, June 26, 1998.

[35] www.policyworks.gov/org/main/mp/library/policydocs/antstats.htm.

[36] Wireless Communications and Public Safety Act of 1998, H.R. 3844, 105th Cong., § 715. Use of Federal Property to Provide Wireless Services (introduced May 12, 1998).

State and Local Governments

The City of Belvedere California has leased rooftop space for cellular antennas. The monthly rent is $1,500.[37] Birmingham, Michigan has entered into an agreement to lease two antenna sites to a cellular company for $19,200 per year plus cellular service for city emergency and public safety personnel.[38] Redmond, Washington entered into a lease agreement with Sprint Spectrum that allows Sprint to place an antenna on the city's water tank. The first year site fee is $10,000 and will increase by no less than 4% annually.[39] Finally, the city of Raleigh, North Carolina has approved an agreement with AT&T Wireless that allows it to install antenna facilities at a city location for a fee of $18,000 per year.[40]

At the state level, the California Department of Transportation ("Caltrans") has adopted a master license agreement that serves as the model agreement for cellular and PSC carriers interested in placing wireless antennas on Caltrans property.[41] Subject to the specifications associated with a given arrangement, Caltrans has recommended annual lease fees of:

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[37] Municipal Research & Services Center/National League of Cities, Examples of Programs for Cities, www.mrsc.org/legal/telecomm/antenn.htm.

[38] *Id.*

[39] Municipal Research & Services Center, City of Redmond, WA Facilities Lease for Telecommunications Facilities, www.mrsc.org/legal/telecomm/sprint.htm.

[40] City Council of Raleigh, Report and Recommendation of City Manager, Communications Tower AT&T/Optimist Park Approved, Apr. 12, 1998.

[41] Department of Transportation, Telecommunications Master License Agreement Cellular and PSC Providers, www.abag.ca.gov/bayarea/telco/samples/caltrans.html.

	Macrocell[42]	Minicell[43]	Microcell[44]
Prime Urban[45]	$21,000	$18,000	$15,000
Urbanized[46]	$16,200	$15,000	$12,000
Rural[47]	$12,000	$12,000	$9,900

A universal fact associated with each of these entities, whether they are private companies or government agencies, is that they believe that they can create a profitable business by catering to the needs of a growing number of wireless service providers in search of new antenna sites. More specifically, these entities believe that the site leasing business will continue to be profitable due to 1) long-term leases; 2) low customer churn because relocation is difficult and costly; 3) low variable operating costs and high profit margins 4) low maintenance costs, and 5) a growing, diversified customer base.

At a minimum, if the FCC persists in requiring utilities to charge antenna attachment fees calculated from its pole attachment rate formula it will completely distort the operation of this competitively functioning market.

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[42] Macrocell: Facility with nine (9) or more antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower when combined exceeds 500 square feet, not to exceed sixteen (16) antennas or two thousand five hundred (2,500) square feet. A standard telecommunications facility with a vault or enclosed building is an example of a macrocell site.

[43] Minicell: A facility with four (4) to eight (8) antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined is in excess of 300 square feet but less than 500 square feet. A standard telecommunications facility with free-standing cabinets on a pad is an example of a minicell site.

[44] Microcell: Facility with one (1) to three (3) antennas and/or with equipment building or concrete equipment pad space and space required for the foundation of the monopole or tower, when combined is less than 300 square feet.

[45] "Prime Urban" - Are the "Urbanized" portions of the Counties of Marin, San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, Los Angeles, Orange and San Diego.

[46] "Urbanized" - includes all areas defined as "Urbanized" in 23 U.S.C. 101 ("An area with population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to the approval by the Secretary...").

[47] Rural - any area within the State of California not "Urbanized".